

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JAMES F. CHILES</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 189,843 & 189,960
<b>STATE OF KANSAS</b>	)	
Respondent	)	
AND	)	
	)	
<b>STATE SELF INSURANCE FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the September 18, 1998 Award entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument in Topeka, Kansas, on April 14, 1999.

**APPEARANCES**

Roger D. Fincher of Topeka, Kansas, appeared for the claimant. Scott M. Gates of Topeka, Kansas, appeared for the respondent.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. Additionally, at oral argument to the Appeals Board, counsel announced there would be no claim at this time for permanent injury to the right hand in Docket No. 189,960.

**ISSUES**

Docket No. 189,843 is a claim for an April 14, 1994 accident and resulting mid back injury. And Docket No. 189,960 is a claim for an April 18, 1994 accident and injuries to the right hand.

The Judge found that claimant did not sustain permanent injury or impairment to his back as a result of the April 14, 1994 accident and failed to present any evidence of permanent impairment to the right hand. Therefore, the Judge denied the requests for permanent partial general disability benefits in both claims.

Claimant contends the Judge erred by failing to award him benefits for either a permanent total disability or a high permanent partial general disability. Claimant alleges he has sustained both physical and psychological injury that has significantly limited his ability to work.

The only issue before the Board in both claims is the nature and extent of injury and disability.

#### **FINDINGS OF FACT**

After reviewing the entire record, the Board finds:

1. James F. Chiles worked for the State of Kansas as a corrections officer. On April 14, 1994, Mr. Chiles hurt his mid back when he backed into a metal plate protruding from a cell door. Also, on April 18, 1994, Mr. Chiles injured his right hand when a bullet ricocheted off a metal target.
2. The parties stipulated that Mr. Chiles sustained personal injury by accident arising out of and in the course of employment with the State on both April 14 and 18, 1994. But the issue in these proceedings is whether Mr. Chiles sustained either permanent physical or psychological injury as a result of the injuries.
3. Mr. Chiles last worked for the State on April 28, 1994. Since that date, Mr. Chiles has not worked for any employer nor applied for employment. When he last testified in April 1998, he stated that he now takes medicine for both pain and his nerves. He described instances following his accidents when he could not talk, could not rationalize, could hardly walk, felt confused, and had problems with short-term memory. When describing his pain, Mr. Chiles stated that it begins in his mid back and sometimes goes down into his legs or up over his shoulders. In addition to his back and psychological problems, Mr. Chiles also has bilateral carpal tunnel syndrome.
4. Physiatrist Sharon McKinney, D.O., one of the doctors that Mr. Chiles saw following the April 1994 accident at his attorney's request, testified that she examined Mr. Chiles in September 1994. The doctor found no fracture in the lumbar or thoracic spinal areas but found evidence of degenerative disc disease at 2 or 3 levels. In the September 29, 1994 medical report to attorney Beth Foerster, Dr. McKinney writes:

In answer to your questions: as related to the injury sustained in the mid back when he backed into the steel plate earlier this year, he doesn't need a lot of treatment for it. He has required considerable explanation and is still having some difficulty realizing that one can have a lot of pain without having a disc dislodged. In that injury he bruised the periosteum and/or the tip of the spinous process, also bruised/contused the muscles in the area and it has healed with some scarring that continues to be extra sensitive to pulls and to touch. The area gets "pulled" every time he moves his arms or gets up or breathes so it is an ongoing source of discomfort for him.

5. Dr. McKinney testified that Mr. Chiles has a 10 percent whole body functional impairment because of his back injuries. The doctor found a 6 percent impairment in the low back and a 4 percent impairment in the thoracic spine. Although the doctor acknowledged that Mr. Chiles injured his low back in either 1991 or 1992, Dr. McKinney believes the low back was aggravated by the April 14, 1994 accident. Both Dr. McKinney and Dr. Sankoorikal provided lengthy explanations how the low back may have been aggravated by the April 14, 1994, accident.

6. After reviewing a task list prepared by Mr. Bud Langston with Mr. Chiles' input, Dr. McKinney indicated that, as a result of the April 1994 back injury, Mr. Chiles had lost the ability to do all 8 of the work tasks that he had previously done in the immediate 15 year period before the April 14, 1994 accident. At the time of the September 1994 examination, the doctor believed Mr. Chiles' ability to work was quite limited. In the doctor's September 1994 report, she wrote:

If this gentleman is required to do any kind of guarding of prisoners he is totally unsafe to himself, any one else at the job and the prisoners. He will not be able to manage them. If he is behind a desk "pushing papers" and is allowed to stand up from time to time, walk around the room and desk he might be able to manage 4 hours a day but that means only "pushing papers" absolutely nothing else.

7. Physiatrist Joseph Sankoorikal, M.D., treated Mr. Chiles on four occasions from January 17 through February 22, 1995. The doctor diagnosed myofascial pain in the mid thoracic area involving the lower trapezius muscle, degenerative disc disease in the lumbar area, and carpal tunnel syndrome. After administering treatment, the doctor believed that Mr. Chiles' mid back pain had resolved. Therefore, the doctor concluded that Mr. Chiles had no permanent impairment in the thoracic spine although he may continue to have flare ups from time to time and require additional professional help.

8. Because Mr. Chiles' low back complaints resolved "pretty well", Dr. Sankoorikal concluded that any aggravation of the low back was only temporary in nature. But that opinion is contradicted by the doctor's testimony and notes that indicate Mr. Chiles continued to have ongoing low back pain as of the date of their last meeting on February 22, 1995. The doctor testified:

As I told you, I did not feel that there was a need for any rating at that time for him because of the symptomatology. He was sent to me for the mid thoracic pain. That pain was completely gone and he didn't have any residual symptomatology, even though he had two other major components going on with him, and I did not consider that in my dictation on that day. I was only referring to that area where he was hit. But he continued to have pain in other areas, the carpal tunnel and the low back and the degeneration and things like that, so I did not enter those things. I was concentrating and looking only at the mid thoracic area. . . .

Well, again, I think we need to distinguish where he's making progress and where he's not. As we know he has low back pain, and the situation associated with that is -- I'm sure he wasn't making much progress which is obvious when he came to see me, too. But the point I was trying to make was that particular situation with his mid thoracic area, he was feeling better. He said that the burning sensation is gone, things like that.

After it was established that Mr. Chiles' low back may not have recovered "pretty well", the doctor stated that the remaining low back pain was caused by degenerative disc disease unrelated to the April 1994 accident.

9. Dr. Sankoorikal would not place any restrictions on Mr. Chiles for injuries sustained in the 1994 accident. But, because of the carpal tunnel syndrome and degenerative disc disease in the low back, the doctor does not think that Mr. Chiles should return to work as a corrections officer.

10. Administrative Law Judge Floyd V. Palmer ordered an independent medical evaluation by orthopedic surgeon Sergio Delgado, M.D. Dr. Delgado examined Mr. Chiles on June 4, 1996. The doctor testified that he believes Mr. Chiles sustained a soft tissue injury in the mid back as a result of the April 14, 1994 incident. The doctor found that Mr. Chiles has a 7 percent whole body functional impairment according to the *AMA Guides to the Evaluation of Permanent Impairment*, Third Edition, Revised. The doctor broke that rating down as 2 percent for pain in the mid back and 5 percent for loss of motion in the spine. Although Mr. Chiles complained of symptoms in his neck, low back, arms and legs, Dr. Delgado believes that Mr. Chiles injured his mid back only in the April 14, 1994 incident. In his June 10, 1996 letter to Judge Palmer, the doctor wrote:

I judge that the injury sustained effected [sic] the mid back region and therefore his impairment for injuries are in this area only.

From table 53, page 80, section 2b, of the AMA Guides to the Evaluation of Permanent Impairment, third edition (revised), a 2% whole person impairment is given for specific disorder of the spine. An additional 5% whole person impairment is given for loss of motion of the thoracic spine which could be related to the injury sustained. His total whole person impairment for the injury sustained would be calculated as a 7% whole person impairment.

11. When asked about Mr. Chiles' former work tasks, Dr. Delgado identified 3 out of the 8 total tasks that Mr. Chiles could not do because of the mid back injury.

12. At his attorney's request, Mr. Chiles met with clinical psychologist James R. Eyman, Ph.D., on two occasions in August 1996. Dr. Eyman indicated that Mr. Chiles was diagnosed in 1985 as being depressed and anxious. Dr. Eyman testified that Mr. Chiles' depression and anxiety have been aggravated by the April 1994 back injury and resulting pain. Without psychological treatment, the doctor believes Mr. Chiles will remain depressed

and anxious. Using the revised third edition of the *AMA Guides*, the doctor places Mr. Chiles in the markedly impaired category. Explaining his conclusion, the doctor testified:

This category [markedly impaired] requires significant impediment to useful functioning in four categories: Activities of daily living, social functioning, concentration and adaptation, and Mr. Chiles at the time that I saw him was very withdrawn and was not socializing as he had previously. He was not helping around the house as he had previously. He was at times having difficulty concentrating. He would go to do something and forget what he was going to do, so he was experiencing an impairment in all of those four areas.

13. Dr. Eyman diagnosed Mr. Chiles as having a generalized anxiety disorder and major depression. The doctor believes Mr. Chiles now has a 50 to 75 percent permanent functional impairment as a result of the psychological condition. Additionally, the doctor testified that during some periods before the accident Mr. Chiles had a mild impairment due to his psychological condition that constituted a 20 to 25 percent functional impairment. But the doctor believes that immediately before the accident, Mr. Chiles' mental condition was such that he had no impairment.

14. When Dr. Eyman last saw Mr. Chiles, the doctor believed that Mr. Chiles was too depressed and anxious to function in a work situation. And without treatment, Mr. Chiles would remain that way. Although the doctor believes Mr. Chiles' psychological condition was stable for at least six months before the evaluation, the doctor does not believe that Mr. Chiles has reached maximum medical improvement. From a psychological perspective he believes Mr. Chiles would significantly benefit from individual psychotherapy and medication.

15. Dr. Eyman also mentioned that in April 1994 the Veterans Administration Mental Hygiene Clinic gave Mr. Chiles a prescription for Prozac, an antidepressant medication, but that he did not take it. The doctor testified that the medicine would help Mr. Chiles be less depressed. Although the doctor was not asked if the medication would return Mr. Chiles to his pre-April 1994 status, the implication was that it would not as the doctor believes that Mr. Chiles needed psychotherapy lasting considerably longer than one month.

16. Dr. Eyman's testimony that Mr. Chiles' psychological condition was aggravated by the April 14, 1994 back injury is uncontroverted. Likewise, the doctor's opinions that Mr. Chiles' psychological condition has not reached maximum improvement, that Mr. Chiles would benefit from treatment, and that Mr. Chiles' psychological condition is preventing him from working are also uncontroverted.

#### **CONCLUSIONS OF LAW**

1. The Award should be set aside and modified to order psychiatric and/or psychological treatment and award Mr. Chiles temporary total disability benefits commencing August 12, 1996, and continuing until he either reaches maximum medical recovery or is released to substantial, gainful employment.

2. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

3. Based upon Dr. Eyman's uncontroverted testimony, the Board concludes that (i) the April 1994 accident and resulting back injury aggravated Mr. Chiles' psychological condition, (ii) Mr. Chiles has not reached maximum psychological recovery or plateau, (iii) Mr. Chiles is unable to work because of the psychological injury that he sustained as a result of the April 1994 back injury, and (iv) the psychological problem is treatable and, therefore, temporary in nature.

4. Based upon the above, the Board concludes that this claim is not ripe for a final award. Mr. Chiles is entitled to receive psychological and/or psychiatric treatment and temporary total disability benefits. The Board finds that temporary total disability benefits should commence August 12, 1996, that being the date Dr. Eyman first examined Mr. Chiles and determined that he was temporarily and totally disabled from working.

#### **AWARD**

**WHEREFORE**, the Appeals Board finds the September 18, 1998 Award should be set aside. Mr. Chiles is awarded temporary total disability benefits at the rate of \$309.15 per week commencing August 12, 1996, and continuing until he reaches maximum psychological recovery, is released to return to substantial and gainful employment, or until further order from the Director. Additionally, the State of Kansas is ordered to provide Mr. Chiles with psychiatric and/or psychological treatment. The State is ordered to provide Mr. Chiles with three names of mental health care providers from which he is to select a treating doctor. When Mr. Chiles reaches maximum psychological recovery or plateau, the parties should request another regular hearing before the Administrative Law Judge.

#### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Scott M. Gates, Topeka, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director